Local Regulatory Taking Claims: Accounting for State and Federal Regulations to Minimize Liability and Damages Exposure

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I. Introduction

If maps and boundaries came to life, then the drive down the 113-mile stretch of the Overseas Highway for the tourists who fuel the local economy would reveal the jurisdictional odyssey that is Monroe County. The Florida Keys were designated as an Area of Critical State Concern (ACSC) by the Florida Legislature in 1979. Its landmass includes over 13 state and federal parks, and habitat for over 30 land and water species protected under the Endangered Species Act (ESA). "Federal and State government involvement in Monroe County land use planning and decision-making is extensive due to the presence of these aquatic and terrestrial resources that are of regional and national significance."4

All of Monroe County is considered a coastal floodplain subject to the Federal Emergency Management Administration's (FEMA) National Flood Insurance Program (NFIP) requirements.5 The jurisdictional interplay within the County was highlighted by the Florida Key Deer litigation in federal court. The litigation was commenced in 1990 by conservation groups against FEMA, seeking to compel the agency to comply with its obligations under Section 7 of the ESA to consult with the U.S. Fish and Wildlife Service (USFWS) to ensure that its administration of the NFIP would not jeopardize the continued existence of the Key Deer and other endangered species.6 The Key Deer plaintiffs successfully convinced the court of the causal relationship between the availability of federal flood insurance and new development, and obtained an injunction enjoining FEMA from providing any insurance for new development in the suitable habitat of listed species pending further consultation with USFWS.7 In a later inverse condemnation valuation trial involving property that was ineligible for federal flood insurance, the Director of the Monroe County Growth Management Division testified that the impacts of the injunction affecting nearly 50,000 parcels were monumental in halting development.8 The injunction remained in effect until September 13, 2012, after the County agreed to implementing new procedures for limiting and approving development in endangered species habitat.9

Despite its regulatory complexities, the Florida Keys still beckon those searching to live out their favorite Jimmy Buffett song in new primary and second homes. With only one road in and out of the island chain, however, not everyone can stay or play at the same time due in part to hurricane evacuation concerns, which were recently heightened by Hurricane Irma. In order to provide for adequate hurricane evacuation clearance time, the State limits the number of residential dwelling units and non-residential floor area that may be built each year. Residential property owners compete for the limited number of building allocations through the point-based Rate-of-Growth Ordinance (ROGO) that was adopted by the County in 1992.10 Not everyone who wants a ROGO allocation gets one, and the jurisdictional interplay of federal, state, and local regulations in Monroe County has dashed dreams and given rise to numerous inverse condemnation actions against the County.11

This article examines some of the defenses and strategies available to a local government that has been sued for a regulatory taking where state and federal regulations are also at play. It includes discussion of issues at each phase of an inverse condemnation litigation. See “Taking Claims” page 15

INSIDE:

On Appeal............................... 2
From the Chair......................... 3
Streamlining Resiliency: Regulatory Considerations in Permitting Small Scale Living Shorelines................. 4
Conserving the Coasts: Stetson Law Hosts Fifth Annual ELI-Stetson Wetlands Workshop .................. 10
Florida State University College of Law November 2017 Update .... 11
ELULS Membership Application ... 21
TAKING CLAIMS  
from page 1

nation suit, including: ripeness, join-
der and impleader, liability deter-
minations and apportionment, and 
valuation. The article is intended to 
assist the local government in ensur-
ing that liability and damages are 
equitably apportioned to prevent the 
cost of the protection of nationally 
significant resources from falling on 
the backs of local taxpayers.

II. Pre-Trial Issues  
A. Ripeness

A local government’s land use reg-
ulations may try to complement or 
effectuate the intent of state and fed-
eral statutes such as the Clean Water 
Act (CWA) or ESA. In some cases, as 
with Monroe County, such regul-
ations may be compelled by FEMA 
as a condition for the local govern-
ment’s continued participation in the 
NFIP. A frustrated landowner who 
is unable to develop may be eager to 
obtain his first “no” to ripen a taking 
claim and enter the courthouse door. 
A local government should be cautious 
not to stand in the shoes of the state 
or federal government and substitute 
itself as the governmental entity that 
first says “no.”

A review of a regulatory tak-
ing claim begins with determining 
whether a facial or as-applied taking 
has been alleged “because the dates 
of those events will fix the start of 
the limitations period in relation to 
the date of the Landowners’ filing 
suit. There is an important distinc-
tion between the two types of claims 
and each raises different ripeness 
and statute of limitations issues.” The 
ripeness requirement . . . does not 
apply to facial takings, as the mere 
action of the regulation constitutes 
the taking of all economic value 
to the land.”

For as-applied taking claims “[t]o be 
ripe for judicial review the Landown-
ers must show a final determination 
from the government as to the per-
missible use, if any, of the property. If 
there has not been a final determina-
tion, the Landowners’ attempt to seek 
redress from the court is premature.” The 
ripeness requirement is usually 
maj when the property owner files an 
application for a development per-
mit with the local land use authority 
and receives a grant of denial of the 
permit. Although there is a futility 
exception to the decisional finality 
requirement, that exception can only 
apply where at least one meaningful 
application has been filed.

If an as-applied taking claim is 
allledged, the local government should 
examine whether development 
approval would be required from other 
levels of government. Where the plain-
tiff’s claim is not ripe for failure to 
obtain a decision from another level 
of government, the local government 
should assert ripeness as an affirmati-
defense and tee up a motion for 
summary judgment.

Supporting authority for local gov-
ernments on the issue of ripeness and 
liability includes City of Riviera Beach 
Town of Juno Beach. In Shillingburg, 
the landowners sought permission to 
fill submerged lands running between 
Singer Island and the intracoastal 
waterway, described as “mangroves 
and special estuarine bottom lands . . . protected by federal, State and local 
agencies involved in the wetlands 
preservation.” The owners sued the 
City in 1992, challenging the City’s 
comprehensive land use plan as a 
regulatory taking of its submerged 
lands. The Fourth District Court of 
Appeal (4th DCA) reversed the grant 
of summary judgment against the City, 
holding that that landowners’ claims 
were not ripe for review.

In pertinent part, the Shilling-
burg court explained “there is an 
additional sound reason for requir-

ing landowners to take the necessary 
steps and apply for the use they 
claim is an economically viable use 
of their property. Any further develop-
ment would necessarily involve fill-
ing the submerged lands, and thus, 
requests for an amendment to the 
plan and a request to fill the sub-
merged lands would not solely be the 
decision of Riviera Beach but would 
require approval from state agencies, 
including the DER.” Continuing, the 
court went stated that “Riviera 
Beach should not be held responsible 
in damages for a regulatory tak-
ing where it has not unequivocally 
protected all economically viable 
use of the property, especially where 
the decision as to the intended 
uses is not solely its to make and where 
it appears that other agencies may 
indeed be responsible for opposing any 
further development.

In Karatinos, the landowners of unimproved oceanfront property sued 
the Town of Juno Beach and the Flor-
ida Department of Natural Resources 
(DNR) in 1981 contending that the 
landowners were being deprived of 
all use of their property. After DNR 
purchased their property in 1991 and 
was dismissed from the case, the land-
owners continued their suit arguing 
the town was liable for a temporary 
taking from 1982, when the town first 
turned their project down, to 1985, 
when the town approved two units.

The town essentially argued that it 
could not be held liable for damages 
because DNR’s regulations trumped 
the town’s, and those regulations 
would not have permitted develop-
ment. At trial, “a coastal engineer 
with DNR who administered Florida’s 
coastal construction regulatory pro-
gram during the years involved here, 
tested that DNR would never have 
permitted any building seaward of the 
Coastal Construction Control Line on 
this property.” The trial court “found 
as a matter of fact that the Karatinos 
would never have gotten approval from DNR . . . and that accordingly the Karatinos’ 
project was doomed, regardless of the 
Town’s action.” The trial court there-
fore found that the town ordinance 
was not the result of owners’ damages, 
and the appellate court affirmed.

In cases in which land development 
would also require state or federal 
approval, one possible strategy for the 
local government to use in avoiding 
takings liability is to require that the 
State or federal approval be obtained 
before the local permit application is 
decided. The Town of Juno Beach 
employed this strategy, for example, 
in its setback variance process that 
was available to the Karatinos. The 
strategy is not without risk, however. 
The landowner could obtain state or 
federal permit approval, in which case 
without the decision of whether to prohibit 
development, as well as possible tak-
ings liability if development is pro-
hibited, would fall back on the local 
government. Additionally, the landowner 
could be caught in “a classic Catch-22” 
if the state or federal authority refuses 
to process an application until local 
approval is obtained, as the DNR did 
in Karatinos.

A variation of this strategy was also 
employed in Clay v. Monroe County. 
In this case, a group of landowners on 
Big Pine Key filed an action against 
continued...
the county seeking a writ of mandamus to compel the issuance of building permits, as well as for a declaratory judgment and damages for permanent and temporary takings of their land, owing to the withholding of building permits due to concurrency requirements. The trial court ruled in favor of Monroe County. While the case was pending appeal, Monroe County agreed to issue the permits, with the following condition: “If required, each property owner shall obtain a letter of coordination from the U.S. Fish and Wildlife Service and submit it to the Building Department prior to the issuance of the building permit, unless the Habitat Conservation Plan for Big Pine Key is approved and eliminates this requirement.” The County then argued that the mandamus issues in the appeal were moot. The owners disagreed that the County’s decision rendered their action moot, and asked the court to direct that a writ of mandamus be issued.

In declining to grant the relief sought, the Third District Court of Appeal (3d DCA) stated that the condition was “appropriate,” “derives from the federal agency’s jurisdiction under federal law,” and that the court could not “override the jurisdiction of the U.S. Fish and Wildlife Service . . . .”

B. Necessary and Indispensable Parties; Third-Party Practice

In addition to asserting a ripeness defense where development approval would require a decision from another governmental entity, a local government should consider asserting the landowner’s failure to join the other governmental entity as an “indispensable party” as an affirmative defense. “An ‘indispensable party’ is generally defined as one whose interest is such that a complete and efficient determination of the cause may not be had absent joinder.”

Indispensable parties must be included in the litigation, and if they are not added under Fla. R. Civ. P. 1.250(c), then the action is subject to dismissal.

Local governments should not be held liable for a regulatory taking where the regulation is imposed by the state or federal government. If a higher level of government imposed a confiscatory regulation on the local government, then another option available to the local government is to file a third-party complaint against the higher governmental entity. Third-party practice, also referred to as impleader, was introduced in 1965 by Florida Rule of Civil Procedure 1.180. This rule states that a defendant may assert a claim against “a person not a party to the action who is or may be liable to the defendant for all or part of the plaintiff’s claim against the defendant, and may also assert any other claim that arises out of the transaction or occurrence that is the subject matter of plaintiff’s claim.”

In the inverse condemnation cases of Collins and Galleon Bay, for example, Monroe County brought in the State of Florida as a third-party defendant. The property at issue in Galleon Bay involved 14 platted lots along the Big Spanish Channel that surrounded a 2.05 acre landlocked lake. The lots were zoned Commercial Fishing Village (CFV). The “property owner, over the course of several decades, proceeded with numerous efforts to improve its land including, but not limited to, having its subdivision platted, having the zoning district changed, extensively negotiating with the County, and revising its plat.”

In 2002—after failing to obtain allocations for its lots under ROGO—Galleon Bay filed its inverse condemnation action against the County. Galleon Bay’s “odyssey of disappointment,” which caused the 3d DCA to mandate that the trial court find liability in the landowner’s favor, included a denial by the Florida Department of Environmental Regulation (“DER”) of the owner’s application for a permit to dredge a channel from the lake to the Florida Bay, and an appeal of the County’s approval of its plat by the Florida Department of Community Affairs.

The court cited all of these facts in its third-party complaint against the State for indemnification, subrogation, and contribution. In a nutshell, the County’s third-party complaint argued that ROGO—the offending regulation alleged to have taken the property—was imposed by the State in its exercise of regulatory oversight pursuant to the County’s ACSC designation.

While joinder and impleader can be useful tools for getting other potentially liable entities at the table to assist in litigation and share in the apportionment of damages, governmental entities cannot simply point the finger at one another to avoid liability. In Lost Tree Village, the landowner sought to develop a residential community upon its islands and submerged lands. Development had been blocked, however, because the City of Vero Beach had an ordinance prohibiting the construction of a new bridgehead and the Town of Indian River Shores had an ordinance prohibiting residential development without bridge access. Because the property at issue was located partially within the Town and partially within the City, the landowner could not build a bridge and, therefore, could build no houses. The landowner’s taking claim therefore relied “upon the combined effect of the City’s ‘no bridgehead’ ordinance with the Town’s ‘no development without bridge’ ordinance, which effect deprives it from using its property in an economically viable manner.”

The 4th DCA rejected their argument that liability could not be based on the combined effect of the City’s and Town’s regulation. The court cited Ciampetti v. United States, for the proposition that “[a]ssuming that no economically viable use remains for the property, the Constitution could not countenance a circumstance in which there was no fifth amendment remedy merely because two government entities acting jointly or severally caused a taking.” Multi-government action, of which the combined effect deprives a landowner, constitutes a taking: “As a general principle, two levels of government should not be able to avoid responsibility for a taking of property merely because neither of their actions, considered individually, would unconstitutionally infringe upon private property rights... Government decisions are not produced in a vacuum.”

The court concluded that “[w]hile there may be issues of damage apportionment in such a case, that does not bar the claim and permit the taking without compensation. The Constitution entitles the landowner to a remedy.”

A local government with more stringent development regulations than the governmental entity it is seeking to join should be cautious of...
Golf Club of Plantation v. City of Plantation. In that case, the landowner purchased 214 acres of “property with the expectation that it could be converted to a single-family residential usage.” Approximately half of it [was] being used as a golf course, with the remaining half lying undeveloped. The property “was designated commercial recreation under the Comprehensive Land Use Plans of both the City and Broward County, permitting uses such as golf courses, tennis clubs, sports arenas, marina, and dog or horse racing facilities.”

The landowner filed its inverse condemnation action against the City after the City denied its applications to amend the land use designation to low residential use to permit rezoning of the property and the development of a single-family residential subdivision.

“The City moved for summary judgment, arguing that it could not be liable for taking Owner’s property because Owner had failed to obtain the County’s approval to amend its land use plan and that the Owner had failed to sue the County before the expiration of the statute of limitations.” The trial court granted the City’s motion for summary judgment, holding in part that the County was an indispensable party.

On appeal, the Fourth DCA held that the County was not an indispensable party, agreeing with the Owner that “it is only the City against whom an inverse condemnation claim could or should be made.” The court explained: “There is no suggestion by the City that its policy of barring all conversions of golf courses to any other uses has been imposed on it by Broward County. In fact, the record shows that the County has no such policy. As Owner pointed out at oral argument, if the City approved an alternative use that complied with the County’s comprehensive plan, there is a strong probability that County would approve the City’s change of its own plan.”

III. The Liability Phase

“The standard of proof for an as-applied taking is whether there has been a substantial deprivation of economic use or reasonable investment-backed expectations. If an as-applied taking is determined to be ripe and proceeds to a liability determination, the local government should ensure that regulations imposed at other levels of government are taken into consideration when making the ad-hoc Penn Central inquiry.

A. Investment-Backed Expectations

“Consideration of expectations is central to resolution of a regulatory takings claim. ... The lack of a reasonable investment-back expectation is determinative of a takings claim.” An unreasonable investment-backed expectation cannot sustain a regulatory taking claim. Lack of reasonable investment backed-expectations proved fatal to the taking claims of Florida Keys developers in Good v. United States and Collins v. Monroe County.

Based on Good, if regulation of property is pervasive at all levels of government, the local government can argue that it is unreasonable for a developer to purchase the property and continue making an investment in seeking local development approval. Mr. Good sought to develop his Lower Sugarloaf Key property that contained salt...
and freshwater wetlands and “provided habitat for several endangered species, including the Lower Keys marsh rabbit, the mud turtle and silver rice rat.” The property was heavily regulated at both the County and State levels, and several negotiations, development plan modifications, permit denials, and appeals ensued. There was a flurry of activity at the federal level as well, with USFWS playing a role in the permitting decision pursuant to its obligations under the Fish and Wildlife Coordination Act (FWCA) of 1934, and the later adopted ESA. In 1994, “the Corps denied plaintiff’s 1990 application on endangered species grounds.” Mr. Good, who remains something of a Florida Keys legend, was not a happy man and filed suit against the Corps. He alleged that the Corps’ denial of his 1990 permit application to dredge and fill wetland and access navigable waters resulted in a taking.

In determining if Mr. Good had reasonable investment-backed expectations, the court noted that (a) his initial purchase investment was predicated by “pervasive federal and state regulation” of “ecologically sensitive areas” such as his property (b) by the time he chose to invest in development, the complained of regulation was already in place. These facts proved fatal to Mr. Good’s claim. The court explained that “[t]he reasonable investment-backed expectations factor of the Penn Central test properly limits recovery to property owners who can demonstrate that their investment was made in reliance upon the non-existence of the challenged regulatory regime. In part, the rationale for this rule is that one who invests in property with the knowledge of the restraint assumes the risk of economic loss.” Good stated that “state and local restrictions must be considered in determining the presence or absence of reasonable investment-backed expectations to engage in the proscribed use.” The court further stated that “in a case where a developer could recoup his initial investment in the property, but nonetheless chooses to continue to invest in development in the face of significant regulatory limitations, no reasonable expectations are upset when development is restricted or proscribed.” The court concluded that “the pervasiveness of the regulatory regime at the time plaintiff purchased Sugarloaf Shores deprives him of a reasonable expectation to effect his development plans.”

In addition to examining the application of state and federal regulations and if it was objectively reasonable for the landowner to purchase the property and invest in it notwithstanding these regulations, the actual efforts of the landowner must be examined. While this is important to the issue of ripeness and whether the landowner has obtained final decisions from all levels of government, it is also important to the issue of whether the landowner can demonstrate an investment-backed expectation. For example, if development of the property would require a Section 404 permit under the Clean Water Act (CWA) or an Incidental Take Permit (ITP) under the ESA, but the landowner has not made the necessary applications, then the local government could argue that this demonstrates that the landowner has no real investment-backed expectation.

In Collins, the failure of landowners to “take meaningful steps toward the development of their respective properties, or seek building permits, during their sometimes decades-long possession of their properties” proved fatal to their as-applied regulatory taking claims. The 3d DCA stated earlier that “[i]t would be unconscionable to allow the Landowner to ignore evolving and existing land use regulation under circumstances when they have not taken any steps in furtherance of developing their land.” Whether the landowners took steps to develop their property is an inquiry under the investment-backed expectations prong of Penn Central. The Collins court clarified: “Here, the evidence presented at trial showed relatively passive landowners who took minimal action towards the improvement or development of their respective properties and invested little into the development other than their initial purchase costs. Under these facts, the trial court correctly found in favor of the appellees under the reasonable investment-backed expectation prong of Penn Central.” The failure of the landowners to take steps to develop their property was also fatal to the landowners’ claims in Beyer.

B. Economic Impact

The economic impact prong of Penn Central requires evidence “on the change in fair market value of the subject property caused by the regulatory imposition.” This is done by comparing, as of the alleged date of taking, (a) the fair market value (FMV) of the subject property with the offending regulation (“Scenario A”) and (b) the FMV of the subject property without the offending regulation (“Scenario B”).

The key for the local government in litigating the economic impact prong of Penn Central is to ensure that the landowner is not attempting to hold the local government liable for any diminutions in FMV that are attributed to regulations other than the one alleged to have caused the taking. Through discovery, the local government must carefully examine the landowner’s appraisal evidence that is necessary to demonstrate an economic impact, and ensure that the landowner’s appraiser properly considered state and federal regulations that would apply to the use valued under both Scenarios A and B, and that none of those regulations were improperly disregarded. The purpose of the economic impact prong—to isolate the percentage in the diminution in FMV caused by the offending regulation—would be thwarted if Scenario B also assumed state and federal regulations did not apply to development. Their exclusion would have the effect of artificially inflating the value of the use under Scenario B, and thereby the impact of the local regulation being tested.

If the landowner wishes to disregard an applicable state or federal land development regulation under Scenario B, then that landowner should properly allege that the regulation also contributed to the taking, and be forced to join the agency responsible for the regulation as a party to the litigation. This would help minimize the local government’s liability and damages exposure.

As a matter of policy, local taxpayers should not shoulder the burden of protecting resources that are of regional or national importance. The cost of protecting such resources should be spread out at the state and national levels. This is consistent with the design of the Fifth Amendment, which is to avoid having “some
people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.”

IV. Valuation Phase

If a local government is found liable for a regulatory taking and proceeds to the valuation stage, it will still want to ensure that federal and state regulations are accounted for, and that their impact is not excluded, which would have the effect of inflating the fair market value of the property at issue, and therefore, the compensation paid by the local government.

Prior to a valuation trial, the local government may file a motion in limine to prohibit the introduction of any appraisal evidence that does not properly consider applicable state and federal regulations. In Galley Bay, for example, the County filed a motion in limine seeking to prohibit the landowner from presenting any “[v]aluation of the property absent any regulation other than ROGO,” which was the County’s regulation found to have taken the property. The motion was filed because discovery and previous motions indicated that Galley Bay sought to introduce an appraisal that did not properly consider application of the ESA and USFWS’s opposition to residential development (the alleged highest and best use being valued by Galley Bay’s appraiser), nor did it consider regulations prohibiting the issuance of federal flood insurance because of the property’s location in a unit of the CBRS.

Galleon Bay, in fact, filed its own motion in limine in which it sought “to exclude any statement, evidence, or comment that suggests the [ESA] or any federal regulations that protects endangered or threatened species or their habitat is relevant to the valuation or the payment of just and full compensation.”

The trial court denied Galley Bay’s motion in limine but granted the governments’. Specifically, the court held that “[a]ny appraisal of the subject property as of [the date of taking], introduced into evidence or testified to must consider all applicable federal, state and local regulations other than [ROGO], which is the regulation alleged and found to have taken the property.”

The trial court’s decision is consistent with Palazzolo v. Rhode Island. The Supreme Court in that case addressed the “concern . . . that landowners could demand damages for a taking based on a project that could not have been constructed under other, valid zoning restrictions quite apart from the regulation being challenged.” The Court deemed this “a valid concern in inverse condemnation cases alleging injury from wrongful refusal to permit development.”

The Court clarified, however, that “[t]he mere allegation of entitlement to the value of an intensive use will not avail the landowner if the project would not have been allowed under other existing, legitimate land-use limitations. When a taking has occurred, under accepted condemnation principles the owner’s damages will be based upon the property’s fair market value [... ]—an inquiry which will turn, in part, on restrictions on use imposed by legitimate zoning or other regulatory limitations.”

V. Conclusion

Local governments are often the first line of defense in protecting natural resources. In fulfilling this obligation to provide for the welfare of their citizens, as well as satisfying State and federal mandates, local governments will continue to be subject to inverse condemnation actions by landowners within their jurisdictions. In accounting for State and federal regulations, however, there are defenses and strategies available to the local government to minimize its liability and damages exposure, and to ensure that the costs of protecting natural resources are equitably spread with the benefit.

Endnotes
1 Mr. Howard is an Assistant County Attorney in the Monroe County Attorney’s Office and a member of the Florida Bar.
3 Id.
4 Id.
5 An Examination of FEMA’s Limited Role in Local Land Use Development Decision, Hearing Before the House Committee on Transportation and Infrastructure (2016) (Testimony of Heather Carruthers)
9 Galleon Bay v. Monroe County (Trial Tr. Vol. 5, 497, Feb. 8, 2016.)
10 Hurley Rev. Aff. (July 7, 2014), filed in Galley Bay v. Monroe County, Case No. CAK-02-595 (Fla. 16th Jud. Cir.).
12 See, e.g., Clay v. Monroe County, 849 So.2d 363 (Fla. 3rd DCA 2003); Baknight v. Monroe County, 994 So.2d 362 (Fla. 3rd DCA 2008); Sutton v. Monroe County, 34 So.3d 23 (3rd DCA 2009); Emmert v. Monroe County, 83 So.2d 703 (Fla. 3rd DCA 2012); Galleon Bay v. Monroe County, 105 So.3d 555 (Fla. 3rd DCA 2012); Collins v. Monroe County, 118 So.2d 872 (Fla. DCA 2013).
13 The NFIP allows FEMA to make federal flood insurance available only in those areas where the appropriate public body of the community has adopted adequate land use regulations for its flood-prone areas. Monroe County, however one of the requirements was approval of certain land-use ordinances so that it may receive the benefits of the NFIP as a regulated community.”
14 Collins v. Monroe County, 999 So.2d 709, 713 (Fla. 3rd DCA 2008) (“A facial taking, also known as a per se or categorical taking, occurs when the mere enactment of a regulation precludes all development of the property, and deprives the property owners of all reasonable economic use of the property. . . . In an as-applied claim, the landowner challenges the regulation in the context of a concrete controversy specifically regarding the impact of the regulation on a particular parcel of property.”)
15 First Tree Village Corp. v. City of Vero Beach, 838 So.2d 561, 570 (Fla. 4th DCA 2002) (citing Glisson v. Alachua County, 558 So.2d 1030, 1036 (Fla. 1st DCA 1990)).
16 Id.
17 Collins, 999 So.2d at 716 (citing Glisson v. Alachua County, 558 So.2d 1030, 1036 (Fla. 1st DCA 1990)).
18 First Tree Village Corp. v. City of Vero Beach, 838 So.2d 561 (Fla. 4th DCA 2002); Tinnerman v. Palm Beach County, 641 So.2d 523 (Fla. 4th DCA 1994).
19 Id.
20 Shillingburg, 659 So.2d at 1178.
21 Id.
22 Id.
23 Karatinos, 621 So.2d at 470 (“Their claim against DNR was for inverse condemnation, and their claim against the town was for declaratory relief and damages pursuant to 42 U.S.C. § 1983.”)
24 Id. at 470-471.
25 Id. at 471.
26 Id.
27 Id.
28 Id.
29 Id.
30 Id.
31 Id. at 470 (“The town setback ordinance had a procedure for obtaining modification; however one of the requirements was approval from DNR.”)
32 Id. (“The Karatinos then filed an application with DNR for permission to build over the Coastal Construction Control Line, but DNR refused to process the application until the Karatinos received approval from the town. A classic Catch-22.”)
TAKING CLAIMS
from previous page

29 Clay, 849 So.2d 363 (Fla. 3d DCA 2003). 30Id. at 365.
31Id.
32Id.
33 State, Dept. of Health & Rehabilitative Services v. State, 472 So. 2d 790 (Fla. 1st DCA 1985).
34Fla. R. Civ. P. 1.140(b) provides that the pleader may raise the defense of failure to join indispensable parties by motion to dismiss rather than in a responsive pleading. The motion must be made before the pleading. However, if the facts supporting the motion are not apparent in the allegation of the complaint, then a motion to dismiss for failure to join an indispensable party may not be appropriate. Under such circumstances, the matters should be raised as an affirmative defense in the answer. See LeGrande v. Emmanuel, 889 So.2d 991 (Fla. 3d DCA 2004) (“Although Rule 1.140 certainly provides that the failure to join indispensable parties may be raised by motion, we believe that the question of whether [there] are indispensable parties to this suit would be better raised as a matter of an affirmative defense in an answer. . . . That is because on a motion to dismiss, the trial court’s function is to determine whether the allegations contained in the four corners of the complaint state a cause of action... Unless affirmative defenses appear on the face of the complaint, they may not be considered on a motion to dismiss.”).
35See Good v. United States, 39 Fed. Cl. 81, 104, n. 43 (“Plaintiff does not argue here that the state acted under federal order.”); Golf Club of Plantation v. City of Plantation, 487 So.2d 1026 (Fla. 4th DCA 2003) (determining the.clip property restrictions were mandated by the federal regulatory regime. Where the state has effected the alleged taking action under order of the federal government, liability will rest, if at all with the federal government.”); Hendler v. United States, 952 F.2d 1364, 1379 (Fed. Cir. 1991) (holding that takings liability for the state installation of groundwater monitoring wells would properly rest with the federal government where the state acted under federal order.”).
37Galleon Bay v. Monroe County, 105 So.3d 555, 563-564n (Fla. 3d DCA 2012) (“In May 2002, while it was pursuing administrative relief, Galleon sued the Board of County Commissioners (“BOCC”) for inverse condemnation. The State of Florida was later sued as a third-party defendant.”); Collins v. Monroe County, 118 So.3d 872, 874 (Fla. 3d DCA 2013) (“In 2004, the Landowners filed an inverse condemnation action against the County seeking just compensation for the alleged permanent constitutional taking of their property. The County, in turn, filed a third-party action against the State of Florida.”) (internal citation omitted).
38Galleon Bay, 105 So.2d at 557-558.
39Id. at 558.
40Collins, 118 So.3d at 875 (citing Galleon Bay, 145 So.3d at 555-61.)
41Galleon Bay, 105 So.3d at 557-558.
42“A claim for indemnification, subrogation, or contribution must be brought as part of any third-party action under [Fla. R. Civ. P. 1.180]."

New York Buffett, Inc. v. Certain Underwriters at Lloyd’s London, 950 So.2d 438 (Fla. 4th DCA 2007) (“Including Litigation Penalty/Florida, 544 So.2d 240 (Fla. 2d DCA 1989)."
43Lost Tree Village Corp. v. City of Vero Beach and Town of Indian River Shores, 838 So.2d 561 (Fla. 4th DCA) 44Id. at 565-66. 45Id. at 569.
46Id.
47Id.
48Id.
49Lost Tree Village, id. at 568, quoting Ciampetti v. United States, 18 Cl.Ct. 548, 556 (Cl. Ct.1989).
50838 So.2d at 569 (quoting Charles E. Harris, Environmental Regulations, Zoning and Withheld Municipal Services: Takings of Property by Multi-Government Action, 25 U. Fla. L.Rev. 635, 683 (1973)). See also Anhoco Corp. v. Dade County, 144 So.2d 793, 797 (Fla.1962) (holding that multiple governmental units engaged in a cooperative effort to obtain property can all be liable for the taking of property).
51Lost Tree Village, 838 So.2d at 568-569.
52847 F.2d 1026 (Fla. 4th DCA 2003)
53Id. at 1029.
54Id.
55Id. at 1029.
56Id.
57Id. at 1029-1030.
58Id. at 1030.
59Id. at 1030.
60Id. at 1031.
61Collins, 999 So.2d at 713 (citing Penn Cent. Transp. v. City of New York, 438 U.S. 104 (1978)).
62Good v. U.S., 39 Fed. Cl. 81, 114 (1997). See also Good v. U.S., 189 Fed.3d 1355, 1360 (Fed. Cir. 1999) (“Because we find the expectations factor dispositive, we will not further discuss the character of the government action or the economic impact of the regulations.”).
63Forest Properties Inc. v. U.S., 177 F.3d 1360, 1366 (C.A. Fed. 1999) (holding it is not enough for the claimant to prove that he had an investment-backed expectation; he must also prove that the investment-backed expectation is reasonable).
64Good, 48 Fed. Cl. 81, 114 (1997).
65118 So.2d 872 (Fla. 3d DCA 2013).
66Good, 39 Fed. Cl. at 85
67Id. at 85-90
69Good, 39 Fed. Cl. at 93
70Id.
71(citing Loveladies Harbor v. United States, 26 F.3d 1171 (Fed. Cir 1994) and Crepel v. United States, 41 F.3d 627, 631 (Fed. Cir 1994)). The court further explained “[t]his inquiry is informed not only by whether the specific regulatory restrictions at issue were in place at the time of purchase, but also by whether the claimant’s investment in purchase and development can be considered objectively reasonable in light of that climate.”
72Good, id.
73Id. at 111 (“While plaintiff was free to take the investment risks he took in this regulatory environment, he cannot look to the Fifth Amendment for compensation when such speculation proves ill-taken.”)
74Collins, 118 So.3d at 875.
75Collins I, 999 So.2d at 718 (quoting Monroe City, v. Ambrose, 866 So.2d 707, 711 (Fla. 3d DCA 2003).
76Collins, 118 So.3d at 875 n. 7 Noting in contrast, “Galleon Bay involved a landowner who expended hundreds of thousands of dollars in an effort to develop its property and in pursuit of its reasonable investment-backed expectations.”
77Beyer v. City of Marathon, 197 So.3d 563, 566 (Fla. 3d DCA 2013) (Affirming the trial court’s grant of summary judgment in City’s favor, stating: “To be sure, the record is devoid of evidence that—not only at the time of purchase but in all the intervening years—the Beyers pursued any plans to improve or develop the property. They provided no evidence of investment-backed expectations at or since the time the property was purchased, nor demonstrated any reasonable expectation of selling the property for development.”)
78Leon County v. Gluesenkamp, 873 So.2d 460, 467 (Fla. 1st DCA 2004) (“In other words, the court must compare the value that has been taken from the property with the value that remains in the property.”).
79Forest Properties, 177 F.3d at 1367 (“The economic impact of the regulation upon the claimant is measured by the change, if any, in the fair market value caused by the regulatory imposition.”).
80DeF. [s] Mot. in Limine (Apr. 6, 2015), Case No. CAK-02-595.
81Pl. [s] Mot. in Limine No II: Endangered Species (April 5, 2015), Case No. CAK-02-595.
82Order on Motions (Aug. 19, 2015), Case No. CAK-02-595.
83Galleon Bay v. Monroe County, Case No. 3D16-1502 (Fla. 3d DCA 2016).